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No. 92-856

In the Supreme Court of the United States

October Term, 1992

JOSEPH J. PONTE, SUPERINTENDENT,
MASSACHUSETTS CORRECTIONAL INSTITUTE
at WALPOLE, et al.,
Petitioners,

v.

DENNIS J. DOMEGAN,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

REPLY BRIEF FOR PETITIONERS

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On Petition for a Writ of
Certiorari to the United States
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REPLY BRIEF FOR PETITIONERS

In his Brief in Opposition to Petition for Writ of Certiorari, respondent sets forth factors that he claims distinguish this case from Farrar v. Hobby, No. 91-990, 61 U.S.L.W. 4034

(U.S. Dec. 14, 1992), and warrant a different result here from the one reached in Farrar. While petitioners take issue with some of respondent's characterizations of those factors, they will rely on their Petition and Supplemental Brief as each pertains to the points of disagreement. The sole point of the present Reply Brief is that the factors relied upon by respondent to distinguish this case from Farrar were equally present in Nichols v. Romberg, No. 92-402. Yet on January 19, 1993, this Court granted the petition for a writ of certiorari in Romberg, summarily vacated the judgment of the Ninth Circuit, and remanded the case for further consideration in light

of Farrar.[1] Nichols v. Romberg, 61 U.S.L.W. 3491 (U.S. Jan. 19, 1993).

Romberg involves a civil rights action for violation of the plaintiffs' Fourth Amendment rights as a result of an illegal search and seizure by defendant police officers. Romberg v. Nichols, 953 F.2d 1152 (9th Cir. 1992). As in this case, the District Court awarded attorney's fees based upon the plaintiffs' recovery of a nominal damage award of one dollar. Id. Romberg is indistinguishable from the present case as to the issue of attorney's fees. For

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[1] On the same day, this Court also granted the petitions for a writ of certiorari, vacated the judgments, and remanded for further consideration in light of Farrar, two additional cases, American Council of the Blind of Colorado, Inc. v. Romer, No. 92-217, and Kolodzieczak v. Friend, No. 92-292. 61 U.S.L.W. 3490, 3491 (U.S. Jan. 19, 1993).

example, Domegan claims that his case is distinguishable from Farrar because the jury's finding of a violation of Farrar's civil rights was "insignificant," whereas the First Circuit stated that Domegan had prevailed on a significant constitutional claim. Brief in Opposition at 22. However, the Ninth Circuit similarly described the finding that the Romberg's Fourth Amendment rights were violated as a "significant" constitutional victory. Romberg, 953 F.2d at 1157, 1158, 1159 ("a nominal damages award does not a nominal victory make").

Domegan also notes that the District Court in this case reduced its fee award to reflect the limited degree of his success on the merits of his claims,

while the District Court in Farrar did not take degree of success into account at all in formulating its fee award. Brief in Opposition at 21, 25-26. But the District Court in Romberg similarly reduced its fee award to account for the limited degree of the plaintiffs' success in that case. Romberg, 953 F.2d 1155.[2] Moreover, while respondent

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[2] The District Court in Romberg originally reduced the plaintiffs' fee request from $45,000 to $5,000. Id., 953 F.2d at 1155. The Ninth Circuit vacated the initial fee award because "it was 'unable to review the order' as written[.]" Id. On remand, the District Court set an initial lodestar figure of $48,562.50, which it reduced to $29,137.50 in light of the limited degree of the plaintiffs' success. Id. at 1155, 1161. The Ninth Circuit again vacated the fee award and remanded for reconsideration in light of this Court's decision in Texas State Teachers Association v. Garland Independent School District, 489 U.S. 782 (1989). Id. at 1156. The District Court then reinstated its $29,137.50 fee award, and the Ninth Circuit subsequently affirmed. Id.

points out that the fee award in Farrar was more than seven times larger than the fee award in the present case, Brief in Opposition at 20, the $29,137.50 award in Romberg was lower than the $37,123.85 in fees awarded to Domegan. Appendix at 125a.

Petitioners continue to maintain that the judgment of the First Circuit in this case should be reversed in light of this Court's decision in Farrar. Additionally, respondent has failed to point to anything in the facts of this case that justifies different treatment of the petition for a writ of certiorari here, from the petition in Romberg,

which presented an identical issue on indistinguishable facts.

Respectfully submitted,

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